IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.292 OF 2006

Dynanu Tukaram Sankpal & Anr. ...Appellants
Vs.
Hirabai Balwant Patil & Ors. ...Respondents

Mr.P.D.Dalvi for the Appellants
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 7,2006.

P.C.:

1. Heard Shri Dalvi for the Appellants. The Appellants are the original defendant Nos.1 and 2. In a suit filed by the Respondent No.2 decree for partition and separate possession has been passed by the trial court holding that the respondent No.2-Plaintiff and the original defendant No.4 are entitled to one sixth share in the suit lands. One of the contentions raised by the present Appellants is that the original defendant No.3 Hirabai was holding some lands which were the lands of the joint family and therefore the said lands ought to have been subject matter of the suit for partition. The Trial Court recorded a finding that the Appellants have failed to prove that the lands standing in the name of Defendant No.3-Hirabai were of joint family. Therefore, the Trial Court came to the conclusion that these lands cannot be included in the suit filed by the respondent No.2. An Appeal was preferred by the Defendant No.3-Hirabai to the District Court on the ground that in the operative part of the decree, she was not given any share in partition.

The District court has modified the decree by holding that even the defendant No.3-Hirabai is also entitled to one sixth share in the suit property in which decree for partition was passed.

2. Shri Dalvi for the Appellants submitted that the original defendant No.3 remained absent through out the proceedings of the suit and therefore, she could not have challenged the decree passed by the trial court. He submitted that according to the Appellants Hirabai was already in possession of the part of the joint family properties.

3. I have considered the submissions. It must be noted here that the trial court negatived the contention raised by the Appellants that the property which is held by the defendant No.3-Hirabai is joint family property. It is thus obvious that in partition the said Hirabai was entitled to have a share in the suit property. The Appellate Court has observed that Hirabai being the defendant in the suit for partition, was entitled to a share and that is why in the light of the provisions of section Rule 18 of the Order 20 of the Code of Civil Procedure, 1908, the Appellate court modified the decree passed by the trial court and held that even the Defendant No.3 will get a share of the property. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.